



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 9

RIN 2900-AO30

Servicemembers' Group Life Insurance – Stillborn Child Coverage

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its Servicemembers' Group Life Insurance (SGLI) regulations in order to provide that, if a stillborn child is otherwise eligible to be insured by the SGLI coverage of more than one member, the child would be insured by the coverage of the child's SGLI-insured mother.

DATES: Comments must be received by VA on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO30-Servicemembers' Group Life Insurance – Stillborn Child Coverage." Copies of comments received will be available for public inspection in the Office of

Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Gregory C. Hosmer, Senior Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 842-2000, ext 4280. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Veterans' Survivor Benefits Improvements Act of 2001, Public Law 107-14, established a program of family insurance coverage under Servicemembers' Group Life Insurance (SGLI) through which a SGLI-insured service member's insurable dependents could also be insured. Section 1965(10) of title 38, United States Code, defined "insurable dependent" as a service member's spouse or child. Under 38 U.S.C. 1967(a), the child of a SGLI-insured member is automatically insured for \$10,000.

Section 1967(a)(4)(B) prohibits an insurable dependent who is a child from being insured at any time under the SGLI coverage of more than one member, i.e., more than one SGLI-insured parent. If a child is otherwise eligible to be insured by the coverage of more than one member, under section 1967(a)(4)(B) the child is insured by the coverage of the member whose eligibility for SGLI

occurred first, “except that if that member does not have legal custody of the child, the child shall be insured by the coverage of the member who has legal custody of the child.” Which parent has legal custody of a child is determined in accordance with applicable State law.

Section 402 of the Veterans’ Benefits Improvement Act of 2008, Public Law 110-389, expanded the definition of “insurable dependent” for SGLI purposes to include a “member’s stillborn child.” On November 18, 2009, VA added paragraph (k) to 38 CFR 9.1 to define the term “member’s stillborn child” for purposes of SGLI coverage. 74 FR 59479.

Our research has determined that the law of the 50 States is silent as to which parent of a stillborn child has legal custody of the stillborn child. VA would not be able to determine the legal custodian of a stillborn child in accordance with State law. Therefore, we propose that a stillborn child of two SGLI-covered parents will always be insured under the mother’s coverage.

Ease of application is just one reason for adopting such a simple rule. VA proposes this rule also because a stillborn child was exclusively in the mother’s physical custody. Furthermore, if the paternity of a stillborn child were in issue, it would be particularly onerous to require a stillborn’s father to establish paternity of the stillborn child. It would be more compassionate under such circumstances to simply apply a standing rule that obviates the need for such determinations.

We therefore propose a rule to amend 38 CFR 9.5 by adding paragraph (e) to provide that, if a stillborn child is otherwise eligible to be insured by the coverage of more than one member, the stillborn child would be insured by the coverage of the SGLI-insured mother.

This rule would apply to claims filed on or after the publication of the final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This rule would have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act

This proposed rule contains no provision constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

VA has examined the economic, interagency, legal, and policy implications of this proposed rule and it has determined to be a not significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule will directly affect only individuals and will not directly affect small entities.

Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The catalog of Federal Domestic Assistance Program number and the title for this regulation is 64.103, Life Insurance for Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on January 22, 2012, for publication.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans

Dated: January 26, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR Part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS'
GROUP LIFE INSURANCE

1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965-1980A, unless otherwise noted.

2. Section 9.5 is amended by adding paragraph (e) and revising the authority citation at the end of the section to read as follows:

§ 9.5 Payment of proceeds.

* * * * *

(e) If a stillborn child is otherwise eligible to be insured by the Servicemembers' Group Life Insurance coverage of more than one member, the child shall be insured by the coverage of the child's insured mother.

(Authority: 38 U.S.C. 501(a), 1965(10), 1967(a)(4)(B))

[FR Doc. 2012-1990 Filed 01/30/2012 at 8:45 am; Publication Date: 01/31/2012]